Supreme Court, U.S.
FILED

94 669 OCT 1 1 1994

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

YADUNATH B. BADARAYAN,
PETITIONER

VS.

THOMAS DRAKE,
CLEMSON UNIVERSITY
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

YADUNATH B.BADARAYAN, PRO SE
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QUESTIONS PRESENTED

1. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit in which he alleged, with concrete evidence as proof, that he was dismissed from Clemson University as a result of seven erroneous and arithmetically incorrect computations of a single grade, clearly constituting gross negligence by the course instructor, Thomas Drake and members of the grievance committee and Clemson University administrators ?

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2. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, even upon bearing full knowledge and reviewing concrete evidence provided by the petitioner, of the fact that the statutory limitation of the suit ran from 19 Jan 1990 to 20 Jan 1993 in the worst instance, when the petitioner initially filed his suit on 20 Jan 1993 in a timely manner ?

---

3. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, even upon bearing full knowledge and

reviewing

concrete evidence provided by the petitioner of the fact that the actual letter of dismissal of the petitioner from Clemson University was dated 19 Jan 1990 and received by the petitioner on or about 25 Jan 1990, clearly making the petitioner's suit filed on 20 Jan 1993, timely and within the three year statute of limitation ?

---

4. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, by applying and extrapolating irrelevant judgements passed on cases in the past, such as '<u>Nowlin v. General Tel. Co.</u>', '<u>Beaudett v. City of Hampton</u>' and '<u>Santee Portland Cement Co. v. Daniel Int'l Corp.</u>', none of which have any bearing on the unique case of the petitioner ?

5. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit by refusing to recognize the openly blatant 'academic double standards' and 'academic discrimination' still in practice by Clemson University involving favored and preferential treatment of retaining academically deficient student athletes indefinitely, while summarily dismissing the petitioner as a result of an arithmetically incorrect grade in a course, even after the Appellate Court's review of concrete evidence of this alleged fact, provided by the petitioner ?

6. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit by completely ignoring the fact that the petitioner had alleged 'academic double standards' and 'academic discrimination' in his initial suit filed on 20 Jan 1993, well within the three year statute of limitation from March 1990,

the date when the petitioner, for the very first time, acquired knowledge of the aforestated allegations, by reading and retaining as evidence, the Clemson University publication deploring the academic performances of student athletes being given the most preferential and favored treatment in the University ?

---

7. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, by clearly ignoring the fundamental fact respected even by the Supreme Court of the United States that, in any contractual decision, such as the one in this particular instance, the delivery of the actual letter to the petitioner from Clemson Unversity indicating the final decision made by the President of the University and subsequent letter of dismissal from the University, were not received and read and understood by the petitioner till 19 Jan 1990 and on or about 25 Jan 1990,

respectively, thus clearly making 20 Jan 1993, the actual date when the three year limitation of statute ran out, in the worst instance, even upon reviewing the concrete and physical evidence provided by the petitioner to this effect ?

---

8. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit by completely ignoring and neglecting a fact of clearly national importance to the future of education in the United States; the fact that state funded Universities, such as Clemson University, cannot practice 'academic double standards' and 'academic discrimination' by providing preferential and favored treatment to student athletes as a faction of any student body simply and clearly because those students earn millions of dollars for the Universities, thereby failing to uphold the basic tenet that every state funded University should be managed and run as a non-profit institution of academic excellence and not as a profit-oriented business ?

PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all parties to the proceedings in the Fourth Circuit.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS vi

TABLE OF CONTENTS vii

OPINION BELOW 2

JURISDICTION 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 15

CONCLUSION 17

INDEX TO APPENDICES

Unpublished, Court of Appeals, FourthCircuit,

16 June, 1994 ..... A-1

Court of Appeals Denial for Rehearing, 13 July, 1994 .... A-2

Petitioner , Yadunath B. Badarayan respectfully prays that the Writ of Certiorari be issued to review the decision of the U.S. Court of Appeals for the Fourth Circuit which refused to disturb the decision of the U.S. District Court that the petitioner's case be dismissed because of the limitations of statute. Further, the Appeals Court for the Fourth Circuit failed to recognize the concrete and physical evidence provided by the petitioner to clearly indicate that the suit had infact been filed in a timely manner and also completely ignored the issues of 'academic double standards' and 'academic discrimination', alleged by the petitioner with full proof of the allegations made.

The U.S. Court of Appeals further applied and extrapolated the rulings and judgements of three completely irrelevant cases in the past in a hasty effort to reach a judgement on the petitioner's case. The petitioner has expounded on all the details later in this petition.

OPINIONS BELOW

The unpublished written opinion of the Court of Appeals appears in Appendix A-1 of this Petition. The Court of Appeals denial of the Petition for Rehearing appears in Appendix A-2.

JURISDICTION

The Court of Appeals' unpublished written opinion in this matter was filed on June 16, 1994. A timely Petition for Rehearing was filed on June 28, 1994. The Court of Appeals' denial of the Petition for Rehearing was issued on July 13, 1994. This Court's jurisdiction is invoked under 28 USC 1332.

STATEMENT OF THE CASE

The issues involve the dismissal of the petitioner, a foreign national, from Clemson University in Jan 1990, as a result of an arithmetically erroneous and incorrect grade given by the course instructor and the favored and preferential treatment given to student athletes, constituting blatant 'academic double standards' and 'academic discrimination' practised by Clemson University.

BACKGROUND :

The petitioner initially enrolled into Clemson University in August 1988 into the Masters program in Electrical Engineering. In one of the courses taken by the petitioner that was taught by course instructor Thomas Drake, the petitioner was assigned an incorrect grade of 'D'. When the petitioner's attempts to have the situation resolved by the instructor failed, the petitioner took the matter to the graduate academic grievance committee, comprising of at least three University employees, holding bonafide doctorates and two students.

Between February 1989 and November 1989, the course instructor and the grievance committee provided the petitioner with the following arithmetically erroneous and incorrect total computations of his final grade :

A total of 68.9% on February 14, 1989

A total of 68.9% on April 14, 1989

A total of 65.9% on or about September 25, 1989

A total score of 65.9% on October 23, 1989

A total score that calculated to 64.445% on November 3, 1989

A total score of 69.04% on November 10, 1989

A total score of 69% on November 14, 1989

The petitioner met with the Vice President and the President of the University and indicated to them the manner in which he had been treated with threats and indifference by the members of the grievance committee, that the grievance committee had deliberately delayed taking action on his case for more than six months, in full violations of published University policies and that each and every one of the total score computations of his

grade calculated by the instructor and the grievance committee was arithmetically incorrect and erroneous. However, the President of the University decided to concur with the grievance committee's findings.

The letter from the President of the University to the petitioner, informing him of the final decision was mailed to the petitioner with an incorrect address. The U.S. Postal Service returned this letter to the Office of the President without delivering it to the petitioner. The petitioner was finally able to personally pick up the letter from the Office of the President on January 19, 1990. Subsequent to the petitioner's reading and understanding of the President's final decision on January 19, 1990, the petitioner received another letter from the Graduate School, indicating that the Registrar had been informed to dismiss the petitioner from the University, on or about January 25, 1990, only after the reading and understanding of which the petitioner fully realized that he had indeed been dismissed from Clemson University.

The petitioner took this matter up with state and federal authorites and Senators. When everything failed to change the situation, the petitioner filed his initial suit in the U.S. District Court on January 20, 1993, well within the three year limitation of statute.

The U.S.District Court dismissed the petitioner's case stating that the petitioner's statute of limitations ran from January 15, 1990 to January 16, 1993. Further, the U.S. District Court failed to even acknowledge the allegation that the petitioner had detailed in his initial suit regarding the blatant 'academic double standards' and 'academic discrimination' practised by Clemson University.

The petitioner filed an Appeal at the U.S. Court of Appeals for the Fourth Circuit that was also dismissed. The U.S. Court of Appeals quoted three totally irrelevant judgements passed on cases in the past and on the dubious strength of those alone, dismissed the petitioner's case. The petitioner then filed a Petition for Rehearing at the U.S. Court of Appeals for the

Fourth Circuit. This Petition for Rehearing was subsequently denied by the Court of Appeals and the petitioner has now brought his case before the United States Supreme Court.

The petitioner has provided physical and factual evidence to the U.S. Court of Appeals that :

1. The petitioner received the final decision of the President of Clemson University only on January 19, 1990.

2. The petitioner received the final letter of dismissal from Clemson University only on or about January 25, 1990.

3. Clemson University clearly practices 'academic double standards' and 'academic discrimination' by retaining academically deficient student athletes indefinitely, while dismissing the petitioner on the basis of an arithmetically incorrect grade.

The U.S. Court of Appeals has failed to recognize the facts and arguments made by the petitioner, by claiming that :

1. The petitioner knew of his dismissal from Clemson University as early as January 15, 1990.

2. The petitioner did not raise any claims of 'academic discrimination' or 'academic double standards' of sufficient specificity.

3. The petitioner's dismissal from Clemson University was a result of a letter grade that remained unchanged by the instructor throughout, thus giving the petitioner the complete knowledge that it would never be changed.

The petitioner has repeatedly made the argument that he was not aware of his dismissal from the University till around January 25, 1990, nor even of the final decision of the President on his grievance appeal till January 19, 1990. The petitioner has provided physical evidence in the form of letters to the Court of Appeals, clearly indicating this to be fact, that have been completely ignored.

The petitioner has always raised the claim since the filing of his initial suit that Clemson University treats certain students in a

favored and preferential manner, while dismissing the petitioner as a result of an arithmetically incorrect grade, clearly indicating academic double standards and academic discrimination. The petitioner has further provided physical evidence of this to the Court of Appeals in the form of news articles published by Clemson University on their campus, even bearing interviews with their Vice Presidents and other administrators about this academic double standard. All of this has been completely ignored by the Court of Appeals.

The petitioner has further proved to both the U.S. District Court and the U.S. Court of Appeals that his claim of gross negligence against Thomas Drake and Clemson University arise from the fact that simple arithmetic computations that could be completed even by gas station attendants and high school dropouts, were repeatedly computed incorrectly, even with the combined efforts, and the aid of computers, of at least four employees of Clemson University, including the instructor, all holding bonafide doctorates.

The final decision on the petitioner's grade appeal further did not necessary mean that the petitioner was dismissed from the University. It was only upon receiving the letter from the Graduate School on or about January 25, 1994, that the petitioner fully realized that he had indeed been dismissed from the University.

As regards the policy practised at Clemson University pertaining to 'academic discrimination' and 'academic double standards', the petitioner details some of the quotes from the newsmagazine article already provided to the Court of Appeals for the Fourth Circuit :

1. The average GPR (grade point ratio) of six teams fell between Fall 1988 and Fall 1989. The volleyball team made the biggest fall from 2.85 in 1988 to 2.52 in 1989. The GPR for varsity football fell from 2.07 in 1988 to 1.90 in 1989. The men's tennis and swimming teams, the soccer teams and the women's track team also fell in average GPRs.

2. Perhaps IPTAY should crack down on these presumptious administrators, instead of wasting precious time and effort on ACADEMICS (of all things). This IS Clemson University after all. What are these student athletes here for anyway - an education ? Get real.

3. The fact remains that you enjoy a privileged status at a institute of learning which due not your superior academic performance, but rather the fact that you play ball.

4. The purpose of a college, however, is education. Advantages should be given to underprivileged students with potential, not athletics.

5. But student athletics deserves special emphasis because it's the main money maker for the school!

6. I'm sure the honors students are tired of being told that they are so special, their housing and scheduling priorities rank just below those of the athletes. Wow. A rare privilege indeed and an honor.

As the petitioner has repeatedly indicated since the initial filing of his suit in the U.S.District Court, the academic double standards and academic discrimination policies exist at Clemson University. The Court of appeals has applied the judgement of "Beaudett v. City of Hampton" and stated that the petitioner has never raised a claim of sufficient specificity. This is totally incorrect, since the petitioner has raised several claims in his initial suit, his appeal against the Motion to Dismiss, his Appeal to the Court of Appeals and his Petition for Rehearing at the Court of Appeals, each and every one of them stating the simple fact that Clemson University retains student athletes with academic deficiencies indefinetely while dismissing the petitioner as a result of an arithmetically incorret grade that still cannot be computed correctly by the University employees, including the instructor, all of whom have bonafide doctorates and years of teaching experience.

The Court of Appeals has dismissed this issue indicating that the petitioner did not raise a claim of sufficient specificity and

applied the judgement of an irrelevant case "Beaudett v.City of Hampton". In this case, Beaudett recounted his fall over the concrete barrier, his desire to charge the city with gross negligence and his hope that "perhaps the jury will tell them what to do." No other relief was requested or anticipated. In the petitioner's case, the petitioner has clearly indicated to the Courts from the filing of his initial suit by drawing clear logical conclusions that if the privileged student athletes are retained forever as students at Clemson University, the petitioner's dismissal was discriminatory, hasty, premature and unjust. The petitioner has requested specifically from the very beginning that he should be reinstated, awarded his degree and be provided monetary compensation for his losses.

The petitioner hs also clearly indicated to the Court of Appeals, with proof that the letters from the President and the Graduate School indicating that his grievance appeal was over and that he ws dismissed from the University, were received by the petitioner only on January 19, 1990 and on or about January 25, 1994,

respectively. The Court of Appeals has incorrectly applied the judgement of "Nowlin v. General Tel Co.", wherein the Plaintiff, John Nowlin filed a complaint more than six years after he had been discharged. There is a large difference between the filing of a complaint after six years and filing a complaint based on the actual date that it was received. According to the Corpus Juris Secundum, 66 C.J.S. 18 , page 66 : "service of a notice is not effected until the notice comes into the hands of the one to be served and he acquires knowledge of its contents". Moreover, according to the Courts in this country, any complaint, notice or document is deemed delivered if mailed within the set deadline or personally delivered to an authorized official. In the petitioner's case, the letter from the President of Clemson University was never received because it was never deliverd. It was never delivered because it bore an incomplete address and was therefore returned by the U.S. Postal Service to the President's Office.

REASONS FOR GRANTING THE WRIT

In reference to this case, the petitioner has clearly proved the following :

The petitioner was dismissed because of a grade that was computed incorrectly not only by the course instructor, but also three or four other University faculty and administrators, with bonafide doctorates and years of experience, not just once, but a total of seven times. The petitioner has clearly proved that his dismissal occurred as a result of gross negligence by the respondents of this case.

The petitioner was dismissed inspite of the fact that scores of academically deficient student athletes are constantly being retained, even to this day by Clemson University, simply because they make money for the University, clearly constituting academic double standards and academic discrimination.

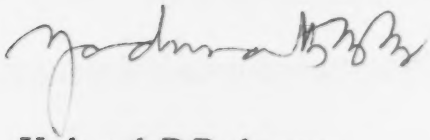
The University is infact being run and managed by the administrators as a profit oriented business and not an institute of

learning or an institution of of academic excellence, constituting complete fraud of the funds received from the State Government. The petitioner clearly did not possess advance knowledge of the fact that the President had made a final decision on his grievance appeal nor that he would be dismissed immediately as a result of that decision, since there is absolutely no proof or concrete evidence provided by the respondents in the last year and a half that this case has been in the courts to indicate so. The petitioner was only made aware of the end of his grievance process on January 19, 1994 and not a single day earlier. Thus the petitioner's suit filed on January 20, 1994, ie clearly within the three year limitation of statute.

CONCLUSION

For the reasons stated, the Writ of Certiorari should issue to review the judgement of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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A-1

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 93-2185

YADUNATH B. BADARAYAN,

Plaintiff - Appellant

versus

THOMAS DRAKE; CLEMSON UNIVERSITY,

Defendants - Appellees

Appeal from the United States District Court for the District of South Carolina, Greenville. G. Toss Anderson, Jr., District Judge. (CA-93-109-3AK)

Submitted : April 19, 1994 Decided: June 16, 1994

Before PHILLIPS, NIEMEYER, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Yadunath B. Badarayan, Appellant, Pro Se. Floyd Matlock Elliot, HAYNSWORTH, MARION, MCKAY & GUERARD, Greenville, South Carolina for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appelant appeals from the district court's order granting summary judgement against Appelant in his diversity action . Our review of the record and the district court's opinion accepting the recommendation of the majistrate judge discloses that this appeal is without merit. Accordingly, we affirm substantially on the reasoning of the district court. Badarayan v. Drake, No. CA-93-109-3AK (D.S.C. Aug 11, 1993). To the extent that Appelant appeals the district court's failure to address his vaguely pled claims of discrimination by Appellees, we find that Appellant did not state a claim of sufficient specificity for

the district court to address. See Beaudett v. City of Hampton, 775 F.2d 127, 1278 (4th Cir. 1985), cert denied, 475 U.S. 1088 (1986). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

July 13, 1994

No. 93-2185

CA-93-109-3AK

YADUNATH B. BADARAYAN,

Plaintiff- Appellant

v.

THOMAS DRAKE; CLEMSON UNIVERSITY,

Defendants - Appellees

ORDER

The appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,

/s/ Bert M. Montague

CLERK

Supreme Court, U.S.
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No. 94-669

In The

Supreme Court of the United States

October Term, 1994

YADUNATH B. BADARAYAN,

Petitioner,

vs.

THOMAS DRAKE AND
CLEMSON UNIVERSITY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

I. The Petition should be denied because the Court of Appeals correctly affirmed the District Court's order which held that the claims raised by the Petitioner were barred by the applicable statutes of limitation.

TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS AND JUDGMENTS BELOW 1

STATUTES AND RULES 1

STATEMENT OF THE CASE 3

SUMMARY OF THE REASONS FOR DENYING THE PETITION 3

ARGUMENT 4

I. The Petition Should Be Denied As There No Special Or Important Reasons For Supreme Court Review 4

II. The Petition Should Be Denied As The Decisions Of The Lower Courts Are Clearly Correct 5

CONCLUSION 9

TABLE OF AUTHORITIES

Page

CASES:

Brayboy v. Ewing, 428 S.E.2d 731 (S.C. App. 1993) 8

DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981) 8

Nowlin v. General Tel. Co., 426 S.E.2d 114 (S.C. Ct. App. 1992), *aff'd*, 444 S.E.2d 508 (S.C. 1994) 6

Regents of University of Michigan v. Ewing, 474 U.S. 214 (1985) 8

Santee Portland Cement v. Daniel International Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) 6

Snell v. Columbia Gun Exchange, 278 S.E.2d 333 (S.C. 1981) 7

Tanyel v. Osborne, 444 S.E.2d 329 (S.C. Ct. App. 1994) 5

CONSTITUTION, STATUTES AND RULES:

U.S. Const. Art. 3 ..... 3, 4

S.C. Code Ann. Section 15-78-110 (Law. Co-op. 1976 and Supp. 1993) 3, 5

S.C. Code Ann. Section 15-3-530(1) (Law. Co-op. 1976 and Supp. 1993) 3, 5, 6

S.C. Code Ann. Section 15-78-70(a) & (b) (Law. Co-op. 1976 and Supp. 1993) 8

S.C. Code Ann. Section 15-78-60(5) & (25) (Law. Co-op. 1976 and Supp. 1993) 9

S.C. Code Ann. Section 32-3-10(5) (Law. Co-op. 1976 and Supp. 1993) 9

Sup. Ct. R. 10 ..... 3, 4

OPINIONS AND JUDGMENTS BELOW

The unpublished Opinion of the Fourth Circuit Court of Appeals, affirming the District Court's grant of summary judgment, is reproduced in full at Appendix A-1. The Order of the United States District Court for the District of South Carolina, Greenville Division, granting summary judgment for the Respondents, is reproduced in full at Appendix A-2.

STATEMENT OF THE CASE

The complaint of the Petitioner, Yadunath B. Badarayan (hereinafter "Badarayan"), in this action is ultimately based entirely upon his dissatisfaction with a grade he received while enrolled in the Master of Science program in Electrical Engineering at Clemson University (hereinafter "Clemson") in the Fall of 1988. Development of certain factual events related to this grade are necessary as summary judgment, based upon the applicable statutes of limitation, was granted in favor of Respondents by the District Court and affirmed by the Court of Appeals.

At the end of the Fall 1988 semester, Badarayan was assigned a grade of "D" in the course ECE 625, Microcomputer Interfacing, by Professor Thomas Drake (hereinafter "Drake"). During the Spring semester of 1989, Badarayan consulted with Drake and other members of the Electrical Engineering Department concerning the grade. Drake ultimately refused to alter the grade, and Badarayan thereafter lodged a grade protest with the Graduate School administration on or about March 30,

1989. A Grievance Committee was formed in September 1989 to hear the matter after informal efforts to resolve it were unsuccessful. The Grievance Committee held three meetings with Badarayan in November and December of 1989. On December 20, 1989, the Grievance Committee found no grounds upon which to recommend that the course grade be changed and recommended that the grade stand as entered. On January 15, 1990, Max Lennon, the President of Clemson University, affirmed the recommendation of the Grievance Committee in a letter to Badarayan.

Upon a request made by Badarayan in January 1990, the United States Department of Education thoroughly investigated Badarayan's complaints of discrimination by Clemson. The department's Office for Civil Rights concluded that the University did not violate Title VI or its implementing regulations and informed Badarayan of its findings on June 22, 1990. Badarayan appealed the findings and requested a reconsideration review. The Office for Civil Rights affirmed its conclusions in an October 25, 1990 letter.

Badarayan filed his complaint in the U.S. District Court alleging breach of contract and negligence on January 20, 1993. The District Court held that both claims asserted by Badarayan accrued on January 15, 1990, the date upon which the President of Clemson University affirmed the recommendation of the Grievance Committee, since the decision of the University was final at that point and the administrative appeal process had run its course. Further, the District Court held that the two year period for filing the negligence claim under the South Carolina Tort Claims Act [South Carolina Code Ann.

§ 15-78-110 (Law. Co-op. 1976 and Supp. 1993)] expired on January 16, 1992, and that the three year period for filing the contract claim [South Carolina Code Ann. § 15-3-530(1) (Law. Co-op. 1976 and Supp. 1993)] expired on January 16, 1993.

Relying substantially upon the reasoning of the District Court, the Court of Appeals affirmed the District Court's decision. The Court of Appeals noted, however, that the record revealed that Badarayan's causes of action actually accrued substantially earlier than January 15, 1990. Because this determination did not affect the disposition of the case, the Court of Appeals declined to disturb the District Court's finding. Further, the Court of Appeals held that to the extent that Badarayan had appealed from the District Court's failure to address his vaguely pled claim of discrimination, Badarayan had not stated a claim of sufficient specificity for the District Court to address. On July 13, 1994, the Court of Appeals denied Badarayan's petition for rehearing.

SUMMARY OF THE REASONS FOR DENYING THE PETITION

The Petition sought by Badarayan should be denied on at least two grounds. First, there were no issues raised at any point in the lower court proceedings or in the Petition to this Court which would invoke the jurisdiction of the United States Supreme Court under Article 3 of the United States Constitution or Rule 10, Supreme Court Rules. This case is essentially a grade dispute, and this Court is an improper forum for its resolution.

Second, both the District Court and the Court of Appeals correctly decided this case on the merits by holding that both of Badarayan's causes of action are barred by the applicable statutes of limitation. Badarayan filed his claim outside the two year period applicable to his negligence cause of action and outside the three year period applicable to his breach of contract cause of action. As a result, this Court should deny the Petition.

ARGUMENT

I. THE PETITION SHOULD BE DENIED AS THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR SUPREME COURT REVIEW.

The Petition should be denied because there were no issues raised at any point in the lower court proceedings or in the Petition to this Court which would involve the jurisdiction of the United States Supreme Court under Article 3 of the United States Constitution or Rule 10, Supreme Court Rules. The Fourth Circuit Court of Appeals' decision is not in conflict with the decisions of any other United States Court of Appeals on the same issues nor does the decision indicate or sanction a departure from the accepted and usual course of judicial proceedings calling for an exercise of this Court's power of supervision. It involves no unsettled questions of federal law, and this case involves no special matters of importance to the public. This case is essentially a grade dispute, and this Court is an improper forum for its resolution.

II. THE PETITION SHOULD BE DENIED AS THE DECISIONS OF THE LOWER COURTS ARE CLEARLY CORRECT.

This case deals with well settled and clearly applicable statutes of limitation. The Court of Appeals affirmed that the District Court below correctly applied S.C. Code Ann. § 15-78-110 (Law. Co-op. 1976 and Supp. 1993) (reproduced in full at Appendix A-8) to Badarayan's negligence claim since Badarayan had asserted a negligence cause of action against a governmental entity and its employee. *See* South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 to -190 (Law. Co-op. 1976 and Supp. 1993). Section 15-78-110 provides for a two year period for bringing claims under the Tort Claims Act. The statute begins to run on the date the loss was or should have been discovered, not when the claimant develops a full-blown theory of recovery. *Tanyel v. Osborne*, 444 S.E.2d 329 (S.C. Ct. App. 1994).

Since Badarayan did not file his complaint until January 20, 1993, his negligence cause of action was clearly barred by the statute. The District Court held that Badarayan's negligence claim accrued on January 15, 1990. The Court of Appeals ruled that Badarayan's negligence claim actually accrued substantially earlier than January 15, 1990. Regardless of which date is utilized, the two year period for filing the negligence cause of action expired long before January 20, 1993.

The Court of Appeals affirmed that the District Court below correctly applied S.C. Code Ann. § 15-3-530(1) (Law. Co-op. 1976 and Supp. 1993) (reproduced in full at Appendix A-8) to Badarayan's breach of contract claim.

Section 15-3-530(1) is the correct statute of limitations since this cause of action allegedly arose after April 5, 1988 and is an action upon a contract, obligation, or liability, express or implied. Section 15-3-530(1) provides for a three year period for bringing breach of contract claims. The statute begins to run when the claimant knows or should have known that the contract had been breached. *Santee Portland Cement v. Daniel International Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989) (holding the "discovery rule" applicable to contract causes of action).

The District Court held that Badarayan's breach of contract claim accrued on January 15, 1990 and was therefore barred when Badarayan filed his complaint on January 20, 1993. In affirming that the breach of contract cause of action was untimely, the Court of Appeals ruled that Badarayan's cause of action actually accrued substantially earlier than January 15, 1990.[1] In so noting, the Court of Appeals referenced *Santee Portland Cement, supra*, and *Nowlin v. General Tel. Co.*, 426 S.E.2d 114 (S.C. Ct. App. 1992), *aff'd*, 444 S.E.2d 508 (S.C. 1994), which clearly establish that in breach of contract cases, the statute of limitation begins to run when the claimant knew or should have known that the contract had been breached and is not tolled pending the outcome of an appeal thereunder.

Without expressly stating, the Court of Appeals indicated its agreement with Respondents' position below, that March 30, 1989 was the correct accrual date for both

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[1] This determination did not affect the disposition of the case since an earlier accrual date would only render the identical result, i.e. the cause of action would remain time barred.

of Badarayan's causes of action.[2] Badarayan knew that his grade was not to be altered by Professor Drake on or about March 30, 1989 as this is the date upon which Badarayan lodged his grade protest. An injured party must act with promptness where the facts and circumstances put him on notice that some right of his has been invaded or that some claim against another party might exist. *Snell v. Columbia Gun Exchange*, 278 S.E.2d 333 (S.C. 1981). In summary, regardless of which of the above-discussed accrual dates is utilized, both of Badarayan's causes of action are clearly barred by the applicable statutes of limitation.

The Court of Appeals also correctly affirmed the reasoning of the District Court's refusal to equitably or otherwise estop the Respondents from raising the statutes of limitation defenses. In order to equitably or otherwise estop the Respondents from arguing the statutes of limitation defenses, Badarayan would have to have shown that the Respondents fraudulently induced him to refrain from filing his suit until the statute had expired. *See*

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[2] Footnote 2 of the Court of Appeals' unpublished Opinion states that "[t]he record reveals that the cause of action actually accrued *substantially* earlier" than January 15, 1990. (Emphasis supplied). Other than March 30, 1989, the only alternative accrual date advocated by the Respondents below was December 20, 1989, the date upon which the Petitioner knew that the Grievance Committee refused to alter the Petitioner's grade. While December 20, 1989 is somewhat earlier than January 15, 1990, March 30, 1989 is *substantially* earlier than January 15, 1990. In any event, this speculation is merely academic since, as noted above, the District Court's ruling and the Court of Appeals' affirmation remain unaffected regardless of which accrual date is utilized.

Brayboy v. Ewing, 428 S.E.2d 731, 732 (S.C. App. 1993). Since there is no allegation and no evidence in the record that the Respondents did anything to influence the timing of Badarayan's lawsuit, Badarayan is not entitled to an equitable tolling of the limitations periods.[3]

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[3] In their "Informal Brief of Appellees" filed in the Fourth Circuit Court of Appeals, Respondents submitted additional arguments to the Court of Appeals why Badarayan's causes of action should be dismissed. While the Court of Appeals' ruling made it unnecessary for that court to address these arguments, Respondents summarize them here for the benefit of this Court:

(1) All of Badarayan's causes of action should have been dismissed below for lack of jurisdiction and failure to state a claim upon which relief can be granted as Badarayan's dissatisfaction with a grade and his disputes arising therefrom are not properly resolved in a federal court. *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985).

(2) Badarayan's negligence cause of action against Respondent Drake is governed by the South Carolina Tort Claims Act and should have been dismissed below as there is no allegation and no indication in the record that Respondent Drake's conduct was outside the scope of his official duty or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-70(a) & (b) (Law. Co-op. 1976 and Supp. 1993).

(3) Badarayan's breach of contract cause of action against Respondent Drake should have been dismissed below as Badarayan failed to allege the existence of a contract between himself and Respondent Drake. *See DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981).

CONCLUSION

As the lower courts correctly decided the statute of limitations issue and as there are no issues raised in the Petition invoking the jurisdiction of the United States Supreme Court, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Counsel of Record for Respondents

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(4) Badarayan's negligence cause of action against Respondent Clemson University is governed by the South Carolina Tort Claims Act and should have been dismissed below as Respondent Clemson University is not liable for a loss resulting from the exercise of discretion or judgment of its employees nor can it be sued for breach of the responsibility or duty involving the supervision of a student except where that responsibility or duty is exercised in a grossly negligent manner. S.C. Code Ann. § 15-78-60(5) & (25) (Law. Co-op. 1976 and Supp. 1993).

(5) Badarayan's breach of contract cause of action is barred by the South Carolina Statute of Frauds as there are no allegations in Badarayan's complaint that the alleged agreement between Badarayan and the Respondents could be performed within one year or that the alleged agreement was in writing. S.C. Code Ann. § 32-3-10(5) (Law. Co-op. 1976 and Supp. 1993).

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 93-2185

YADUNATH B. BADARAYAN,

Plaintiff-Appellant,

v.

THOMAS DRAKE; CLEMSON UNIVERSITY,

Defendants-Appellees.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., District Judge. (CA-93-109-3AK)

Submitted: April 19, 1994 Decided: June 16, 1994

Before PHILLIPS, NIEMEYER, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Yadunath B. Badarayan, Appellant Pro Se. Floyd Matlock Elliott, HAYNSWORTH, MARION, McKAY & GUÉRARD, Greenville, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appellant appeals from the district court's order granting summary judgment[1] against Appellant in his diversity action. Our review of the record and the district court's opinion accepting the recommendation of the magistrate judge discloses that this appeal is without merit. Accordingly we affirm substantially on the reasoning of the district court.[2] *Badarayan v. Drake*, No. CA-93-109-3AK (D.S.C. Aug. 11, 1993). To the extent that Appellant appeals the district court's failure to address his vaguely pled claim of discrimination by Appellees, we find that Appellant did not state a claim of sufficient specificity for the district court to address. *See Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985), *cert. denied*, 475 U.S. 1088 (1986). We dispense with oral argument because the facts and legal contentions are

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[1] The motion was filed as a motion to dismiss but the district court advised Appellant that it would be treated as a motion for summary judgment.

[2] We note, however, that the district court held that the Appellant's cause of action accrued on January 15, 1990. The record reveals that the cause of action actually accrued substantially earlier. *See Santee Portland Cement Co. v. Daniel Int'l Corp.*, 384 S.E.2d 693, 694 (S.C. 1989); *see also Nowlin v. General Tel. Co.*, 426 S.E.2d 114, 116 (S.C. Ct. App. 1992). Because this determination does not affect the disposition of the case, we decline to disturb the district court's finding.

adequately presented in the materials before the Court and argument would not aid the decisional process.[3]

AFFIRMED

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[3] Appellant's motion to expedite is now moot and is dismissed for that reason.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Yadunath B. Badarayan, Plaintiff, v. Thomas Drake and Clemson University, Defendants.	ORDER C.A. No. 6:93-109-3AK (Filed Aug. 11, 1993)

This matter is before the Court for review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(A) and Local Rule 19.02(b)(2)(E) for the District of South Carolina.

The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject or modify, in whole or in part, the recommendation of the magistrate, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1). The plaintiff filed timely objections to the Report and Recommendation of the magistrate.

The plaintiff, acting *pro se*, is a foreign national who was formerly a graduate student at Clemson University seeking a Master of Science degree in electrical engineering. At the end of the Fall, 1988 semester, defendant Drake, a professor at the University gave the plaintiff a grade of "D" in a course entitled Microcomputer Interfacing. The plaintiff challenged this grade pursuant to the grievance procedures of the University. On December 20, 1989, the Grievance Committee recommended that the grade stand as entered. On January 15, 1990, the President of the University accepted the recommendation of the Grievance Committee. The President's action made the decision final. The plaintiff complained to the United States Department of Education, the South Carolina Human Affairs Commission, and the American Civil Liberties Union, all to no avail.

On January 20, 1993, the plaintiff filed this action alleging breach of contract and negligence on the part of the Professor and the University. As an initial matter, the court finds that jurisdiction in this case is proper.[1] Furthermore, this court agrees with the magistrate that the negligence claim can only be raised pursuant to the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 to -190 (Supp. 1992). Clearly, this case

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[1] The defendants rely on *Regents of University of Michigan v. Ewing*, 474 U.S. 214 (1985) as authority for the proposition that this court does not have jurisdiction where the underlying dispute concerns an academic course grade. This reliance is misplaced. In *Ewing* the Court found that such claims are cognizable in a federal court. However, the review is under a very narrow and rigorous standard which commands "great respect for the faculty's professional judgment." *Id.* at 225.

concerns a state employee exercising "discretion or judgment." S.C. Code Ann. § 15-78-60(5) (Supp. 1992).

This court finds that as a matter of law, the claims raised in this complaint are barred by the applicable statutes of limitations. Reviewing the record *de novo*, the court finds that the causes of action accrued on January 15, 1990 when the President of the University accepted the recommendation of the Grievance Committee. The decision of the University was final at that point and the administrative appeal process had run its course. The period for filing the contract claim was three years and expired on January 16, 1993. *See* S.C. Code Ann. § 15-78-110 (Supp. 1992). The plaintiff filed his complaint on January 20, 1993, clearly outside both periods. Therefore, the plaintiff's claims are barred by the applicable statutes of limitations.

In his objections to the Report and Recommendations, the plaintiff essentially argues that the statutes of limitation were tolled while the plaintiff sought relief from the United States Department of Education. However, in order to have this court equitably estop the defendants from raising the limitations defense, the plaintiff must show that the defendants fraudulently induced him to refrain from filing his lawsuit. *See Brayboy v. Ewing*, 428 S.E. 2d 731, 732 (S.C. App. 1992). There is no allegation, and no indication in the record, that the defendants did anything to influence the timing of the lawsuit. Therefore, the plaintiff is not entitled to any equitable tolling of the limitations periods.

THEREFORE, IT IS ORDERED that defendant's motion is granted and that this case is dismissed.

/s/ G. Ross Anderson, Jr.
G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

August 10, 1993.

South Carolina Code Ann. § 17-78-110. Statute of Limitations.

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

South Carolina Code Ann. § 15-3-530(1). Three years or six years.

[For causes of action arising or accruing on or after April 5, 1988, the following provisions will apply:]

Within three years:

(1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520.